



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, California 95814

NOTICE OF PROPOSED ADOPTION OF REGULATION AMENDMENT AND STATEMENT OF REASONS

California Code of Regulations Title 2, Administration Division 5, Local Agency Personnel Standards

DATE: December 14, 1999

TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: Local Agencies Defined

AUTHORITY:

Under authority established in Section 19801, Government Code, the State Personnel Board (Board) has proposed to change Title 2 of the California Code of Regulations (CCR).

REFERENCE:

This regulation is amended to implement, interpret, and/or make specific Section 19800 of the Government Code and *Karen Patchin* (1998) SPB Dec. No. 98-06 (*Patchin*).

PUBLIC HEARING:

Date and Time: February 9, 2000 from 8:30 a.m. to 9:00 a.m.
Place: Auditorium
801 Capitol Mall, Room 150
Sacramento, California
Purpose: To receive oral public comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written comments will close February 8, 2000 at 5:00 p.m. This is to allow time for Board staff to provide copies of any written comments to Board members for their consideration at the time of the hearing. Any person may submit written comments about the proposed changes. To be considered by the Board, written comments must be received at the attention of Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, or telephone (916) 654-0842.

DOCUMENTS RELIED UPON:

Karen Patchin (1998) SPB Dec. No. 98-06.

This document is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES:

No adverse impact on small businesses is anticipated from the implementation of the proposed amended regulation. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

No fiscal impact exists because this rulemaking action essentially codifies existing Board practices.

Determination of Mandate :

The Board has determined that the proposed regulation amendment does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this regulation amendment does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The proposed regulation amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a State policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.) The proposed regulation amendment does not require local agencies to carry out the governmental function of providing services to the public. Rather, the proposed regulation amendment requires local agencies to conform with the Board's interpretation of the intent of existing CCR, Title 2, Section 17528(d) as expressed in *Patchin*.

Impact on Housing Costs:

The proposal will not affect housing costs.

Impact on Businesses:

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Further, this proposed regulation amendment contains no new reporting, recordkeeping and other compliance requirements that would result from the proposed action.

Cost Impact on Private Persons or Entities:

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

ASSESSMENT:

The adoption of the proposed regulation amendment will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

The Board must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

AVAILABILITY OF PROPOSED TEXT AND ISR:

The text of the regulation, the Initial Statement of Reasons and other related material are available upon request directed to the Board's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Board will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation amendment is permanently adopted.

INFORMATIVE DIGEST:

Government Code Section 19801 authorizes the Board to prescribe, amend and repeal regulations to establish and maintain personnel standards on a merit basis for local agencies (including therein standards of qualifications, competency, education, experience, tenure, and compensation) necessary for proper and efficient administration, and to assure state conformity with applicable federal requirements.

Government Code Section 19800 vests with the State Personnel Board the jurisdiction and responsibility of establishing and maintaining personnel standards on a merit basis and administering merit systems for local government agencies where such merit systems of employment are required by statute as a condition of a state- funded program or a federal grant-in-aid program established under the Social Security Act, as amended; the Public Health Service Act; and the Federal Civil Defense Act, as amended.

In *Karen Patchin* (1998) SPB Dec. No. 98-06, the Board's interpretation of "within the local agency" is "within a County department that is in IMS [Interagency Merit System] and subject to LAPS [Local Agency Personnel Standards], and not within the County as a whole."

This rulemaking action will clarify the Board's interpretation of the intent of existing CCR, Title 2, Section 17528(d) as expressed in *Patchin*.

INITIAL STATEMENT OF REASONS:

A review of *Patchin* indicates ambiguity regarding the term "within the local agency" in California Code of Regulations (CCR), Title 2, Section 17528(d). As noted in the Respondent's Brief (case note 8, p.6), "the meaning of the term 'local agency' varies depending on its context." The appellant believed the term to mean "within the entire county," based on CCR, Title 2, Section 17030(h), which, identical to Government Code Section 19810, defines "local agency" to mean "any city, county, city and county, district, or other subdivision of the state or any independent instrumentality thereof." This interpretation would have provided her with mandatory reinstatement to a Humboldt County position with an entity

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that is in the Interagency Merit System (IMS) when she was rejected from a probationary position with another Humboldt County entity that is not in the IMS.

The Board's interpretation of "within the local agency" is "within a County department that is in IMS and subject to LAPS [Local Agency Personnel Standards], and not within the County as a whole." While this decision is precedential, it may well provide for an interpretation that is so narrow that analogous appeals could continue to be filed. For example, another individual could interpret the regulation as providing him with mandatory reinstatement to a county position with an entity that is in the IMS (e.g., the county welfare department or office of emergency services) when he was rejected from a probationary position with another entity in the same county that is not in the IMS.

The intention of the proposed regulation change is to eliminate such misinterpretation along with the phrase "within the local agency," and replace that phrase with a defining explanation of IMS employees' mandatory reinstatement rights under the described circumstances.

The Authority Note is also being amended from Section 19803 to 19801 as the latter statute is more appropriate.

LAURA M. AGUILERA, Chief
Personnel Resources and Innovations Division

Attachment: Text of Proposed Regulation amendment



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Regulations Governing Demotion, Reinstatement and Leaves

For this amendment, text added to the regulations is indicated by underline and text deleted from the regulations is indicated by strikethrough.

Title 2. ADMINISTRATION

Division 5. Local Agency Personnel Standards

Chapter 2. Merit System Regulations

Section 17528 is amended to read:

§17528. Reinstatement.

(a) Permissive Reinstatement. Upon request of an appointing authority to the State Personnel Board Executive Officer, a person who has held permanent or probationary status in the IMS shall be eligible for reinstatement. Reinstatement may be made to any class in which the employee previously had permanent or probationary status, or to another class with substantially the same duties as determined by the State Personnel Board Executive Officer. An appointing authority may require a reinstated employee to serve the probationary period for the class to which the employee is reinstated.

(b) Mandatory Reinstatement After a Nonpermanent Appointment. A permanent or probationary employee who has accepted an emergency, limited-term or provisional appointment in a higher class within the same agency shall, if the employee so desires at the termination of that appointment, be reinstated to a position in the former class.

(c) Mandatory Reinstatement After an Exempt Appointment. An employee with permanent status in the IMS who has accepted an exempt appointment as county welfare director or deputy director in the same or another IMS agency shall, if the employee so desires at the termination of that appointment, be reinstated to a position in the former class.

(d) Mandatory Reinstatement After Rejection During Probation. A permanent appointee who has vacated a position within a department or subdivision that is in IMS in a county to accept another

position within the same or another department or subdivision that is in IMS in the same county local ~~agency~~, and who is rejected during the probationary period, shall be reinstated to a position in the former class, except if dismissed under Section 17544. Reinstatement shall be reported to the State Personnel Board Executive Officer by the appointing authority on the appropriate personnel document.

NOTE: Authority cited: Section 19803~~1~~, Government Code. Reference: Section 19800, Government Code; and *Karen Patchin* (1998) SPB Dec. No. 98-06.